

1 GATES, O'DOHERTY, GONTER & GUY, LLP
15373 Innovation Drive, Suite 170
2 San Diego, California 92128-3427
Telephone: (858) 676-8600
3 Facsimile: (858) 676-8601

4 Attorney: DOUGLAS D. GUY, ESQ. (SBN 117844)
dguy@gogglaw.com

5 NADINE M. SAYEGH, ESQ. (SBN 250651)
6 n_sayegh@gogglaw.com

7 Attorneys for Defendant PORSCHE CARS NORTH AMERICA, INC.

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 JOHN RINALDI, an individual,

13 Plaintiff,

14 vs.

15 PORSCHE CARS NORTH AMERICA,
16 INC., a corporation, and DOES 1
17 through 5, inclusive,

18 Defendants.

) CASE NO

08 CV 0428 JAH NLS

) **NOTICE OF REMOVAL OF ACTION**
) **PURSUANT TO 28 U.S.C. §§ 1331,**
) **1441(b), AND 1446**

) Judge

) Department

) Action Filed: February 5, 2008

20 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

21 **PLEASE TAKE NOTICE** that PORSCHE CARS NORTH AMERICA, INC., hereby
22 removes to this Court the state court action described below.

23 **JURISDICTION**

24 1. This action is a civil action of which this Court has
25 original jurisdiction pursuant to 28 U.S.C. §1331, and is one which
26 may be removed to this Court pursuant to the provisions of 28 U.S.C.
27 §1441(b).
28

1 2. 28 U.S.C. §1331 provides that "district courts shall have
2 original jurisdiction of all civil actions arising under the
3 Constitution, laws or treaties of the United States."

4 3. 28 U.S.C. §1441(a) provides that "any civil action brought
5 in the State court of which the district courts of the United States
6 have original jurisdiction, may be removed by the defendant or the
7 defendants, to the district court of the United States for the
8 district and division embracing the place where such action is
9 pending."

10 4. 28 U.S.C. § 1441(b) provides that "[a]ny civil action of
11 which the district courts have original jurisdiction founded on the
12 claim or right arising under the Constitution, treaties or laws of
13 the United States shall be removable without regard to the
14 citizenship or residence of the parties."

15 5. 28 U.S.C. § 1441(c) provides that "[w]henever a separate and
16 independent claim or cause of action with the jurisdiction conferred
17 by section 1331 of this title is joined with one or more otherwise
18 non-removable claims or causes of action, the entire case may be
19 removed and the district court may determine all issues therein."

20 6. This action is a civil action over which this Court has
21 original jurisdiction under 28 U.S.C. § 1331, and is one which may be
22 removed to this Court pursuant to the provisions of 28 United States
23 Code section 1441(b) in that it states a claim expressly under
24 federal law. Specifically, plaintiffs allege violations of the
25 Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15
26 U.S.C. §§ 2310 et seq.

27 7. Any remaining claims or causes of action in the complaint
28 that are otherwise nonremovable are joined with separate and

1 independent claims or causes of action within the jurisdiction
2 conferred by 28 U.S.C. §1331, and the entire case is therefore
3 removable under 28 U.S.C. §1441(c).

4 8. On or about February 5, 2008, an action was filed in the
5 San Diego Superior Court, North County Division, entitled John
6 Rinaldi v. Porsche Cars North America, Inc., Case No. 37-2008-
7 00051009-CU-BC-NC. A copy of the complaint is attached hereto as
8 Exhibit "A".

9 9. Defendant PORSCHE CARS NORTH AMERICA, INC., was served with
10 a copy of the Summons and Complaint from the state court action on
11 February 7, 2008.

12 10. Defendant PORSCHE CARS NORTH AMERICA, INC. attaches copies
13 of all state court pleadings, process and orders which have been
14 served as follows:

15 a. Complaint for Damages (Exhibit "A")

16 b. Defendant PORSCHE CARS NORTH AMERICA, INC.'s Answer to
17 Complaint (Exhibit "B").

18 11. This Notice of Removal is timely because it is brought
19 within thirty (30) days of the service of plaintiff's Complaint on
20 any defendant.

21 12. A Notice of filing of this Notice of Removal will be filed
22 with the San Diego County Superior Court of the State of California,
23 and served upon plaintiff.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **WHEREAS**, defendant PORSCHE CARS NORTH AMERICA, INC. hereby
2 removes to this court the Superior Court, County of San Diego case
3 entitled John Rinaldi v. Porsche Cars North America, Inc., Case No.
4 37-2008-00051009-CU-BC-NC.

5
6
7 Dated: March 6, 2008

GATES, O'DOHERTY, GONTER & GUY, LLP

8 By: Madeine Sayegh for

9 DOUGLAS D. GUY

10 Attorneys for Defendant

11 PORSCHE CARS NORTH AMERICA, INC.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIVED

CT CORPORATION
A WoltersKluwer Company

FEB 11 2008
PCNA LEGAL DEPT.

Service of Process
Transmittal

02/07/2008
CT Log Number 513064973



TO: Patricia R Britton, General Counsel
Porsche Cars North America, Inc.
980 Hammond Drive, Suite 1000
Atlanta, GA 30328

RE: Process Served In California

FOR: Porsche Cars North America, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: John Rinaldi, etc., Plff. vs. Porsche Cars North America, Inc., etc., et al., Dfts.
DOCUMENT(S) SERVED: Summons, Cover Sheet, Notice(s), Stipulation Form, Complaint
COURT/AGENCY: Superior Court, County of San Diego, CA
Case # 3720080051009
NATURE OF ACTION: Product Liability Litigation - Breach of Warranty - Failure to repair engine defects -
2003 Porsche
ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE: By Process Server on 02/07/2008 at 15:20
APPEARANCE OR ANSWER DUE: Within 30 days after service
ATTORNEY(S) / SENDER(S): Jonathan D. McCue
Lemon Law Advocates
31938 Highway 79 South, Suite A-328
Temecula, CA 92592
951-553-4986
ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day , 798370096867
Email Notification, Patricia R Britton pbritton@porsche cars.com
SIGNED: C T Corporation System
PER: Nancy Flores
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

Page 1 of 1 / BF

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

SUMMONS (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

Porsche Cars North America, Inc., a corporation; and
DOES 1 through 5

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

John Rinaldi, an individual

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NORTH COUNTY

2008 FEB -5 AM 10:59

CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY

"VIA FAX"

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California
North County Division
325 South Melrose
Vista, CA 92081CASE NUMBER
(Número del Caso) 3-2008-00051009-CU-BC-NC

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jonathan D. McCue, Esq. (128896)
Lemon Law Advocates
31938 Highway 79 South, Suite A-328
Temecula, CA 92592

951-553-4986 951-302-5850

DATE:

(Fecha) FEB - 5 2008

Clerk, by

(Secretario)

TONI OZENEALON

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify):

under: ☒ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☐ other (specify):

- ☒ by personal delivery on (date):

☐ CCP 416.80 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.90 (authorized person)

Page 1 of 1

FILED
NORTH COUNTY
2008 FEB -5 AM 11:00

CLERK OF COURT
SAN DIEGO

"VIA FAX"

Lemon Law Advocates
Jonathan D. McCue (128896)
Stephen P. Polapink (177489)
31938 Highway 79 South, Suite A-328
Temecula, CA 92592
(T) 951-553-4986
(F) 951-302-5850

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

John Rinaldi,
an individual,
Plaintiff,

v.

Porsche Cars North America, Inc.,
a corporation; and DOES 1 through
5, inclusive,

Defendants

CASE NO 37-2008-00051009-CU-BC-NC

COMPLAINT FOR RESTITUTION,
DAMAGES AND CIVIL PENALTY

1. Plaintiff John Rinaldi ("plaintiff") brings this action on his own behalf,
and based upon information and belief, against defendants Porsche Cars North America,
Inc., a corporation and DOES 1 through 5, inclusive ("defendants").

Complaint for Restitution, Damages and Civil Penalty

SUMMARY OF COMPLAINT

2. On, or about, April 26, 2007, Plaintiff John Rinaldi purchased a 2003 Porsche, vehicle identification number WP0A A 2 9 9 6 3 S 6 2 3 8 1 1, ("vehicle" or the "Porsche"), from Lexus Kearny Mesa.

3. The vehicle was purchased within, and the nonconformities began during, the manufacturer's, defendant Porsche Cars North America, Inc.'s, factory warranty period.

4. Plaintiff John Rinaldi uses his vehicle primarily for personal, family, and household purposes. Soon after purchase, Plaintiff experienced continuing nonconformities with the vehicle, including, but not limited to, the following: difficulty getting into second gear; popping out of gear; defective first and second gear synchronizer; defective dog teeth; static noise from radio; abnormal clunking/clacking noise from rear of vehicle; intermediate shaft bearing cage failure; intermediate shaft bearing missing bearings; defective flange bearing; vehicle not starting; engine clunking when not starting; engine consuming too much oil; vehicle not starting; and a broken trip switch.

5. Despite confirmation of the nonconformities and repeated repair attempts, defendants have been unable to correct the nonconformities. These nonconformities substantially impair the use, value and/or safety of the vehicle.

6. Plaintiff and his attorneys attempted in good faith to resolve this matter directly with defendant Porsche Cars North America, Inc. until Porsche Cars North America, Inc. without explanation, stopped responding to such efforts. In fact, plaintiff had been offered \$3,000.00 to settle this claim before seeking representation. Defendant Porsche Cars North America, Inc. never reiterated this offer nor explained its withdrawal.

PARTIES

7. Plaintiff John Rinaldi is an individual residing in the County of San Diego, State of California.

8. Defendant Porsche Cars North America, Inc. is a corporation registered and transacting business in the County of San Diego, State of California.

9. The true names and capacities of defendants sued herein under Code of Civil Procedure §474 as DOES 1 through 5, inclusive, are presently unknown to Plaintiff who will seek to amend this complaint to include these DOE defendants when they are identified.

10. At all times mentioned in the complaint, each of the defendants was an agent of each and every other defendant. In doing the things alleged in the complaint, each defendant was acting within the course and scope of their agency and was acting with the consent, permission and authorization of each of the other defendants.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to the Constitution of the State of California, Article VI, § 10, as this case is not a cause given by statute to other trial courts.

12. This Court has jurisdiction over each defendant pursuant to Code of Civil Procedure §410.10 by virtue of their extensive business dealings and transactions within this state. Each defendant is either a corporation or association organized under the laws of the State of California, a foreign corporation or association authorized to do business in

1
2 California, or does sufficient business, has sufficient minimum contacts with or avails
3 itself of the California market through the manufacturing, production, promotion, sale,
4 marketing and distribution of product in California. Exercise of jurisdiction by California
5 courts is permissible under traditional notions of fair play and substantial justice.

6 13. Venue is proper in this county pursuant to Title 29 of the United States
7 Code, Chapter 18, §1132 and Code of Civil Procedure §§ 395 and 395.5 as this is a court
8 of competent jurisdiction, and defendants conduct business in this county.

9 FIRST CAUSE OF ACTION

10 (Complaint for violation of the Song-Beverly Consumer Warranty Act,
11 Civil Code §§1790 ~~et seq.~~ as against all defendants)

12 14. Plaintiff John Rinaldi incorporates all prior allegations.

13 15. The vehicle is a consumer good as defined under the Song-Beverly
14 Consumer Warranty Act.

15 16. Plaintiff is a "purchaser" of consumer goods as defined under the Song-
16 Beverly Consumer Warranty Act.

17 17. Defendant Porsche Cars North America, Inc. is a "manufacturer" and
18 "distributor" as defined under the Song-Beverly Consumer Warranty Act.

19 18. The serious nonconformities have manifested themselves within the
20 applicable express warranty period. The nonconformities substantially impair the use,
21 value and/or safety of the vehicle.

22
23
24
25 *Complaint for Restitution, Damages and Civil Penalty*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

27. Plaintiffs is a "consumer" as that term is defined in the Magnuson Moss Warranty Act.

28. Defendant Porsche Cars North America, Inc. is a "supplier" and "warrantor" as those terms are defined under the Magnuson Moss Warranty Act.

29. Plaintiff's purchase of the vehicle created an implied warranty of merchantability.

30. Defendants have failed to provide a vehicle free from serious defects and nonconformities. They have also failed to adequately repair or replace the vehicle. These failures constitute a breach of the express and implied warranties covering the vehicle. As such, defendants have violated the Magnuson Moss Warranty Act.

31. Plaintiff John Rinaldi has performed in accordance with the provisions of the purchase contract, warranties and all applicable laws.

32. Plaintiff John Rinaldi has suffered damage, in an amount according to proof at trial, as a direct and proximate result of the acts and omissions of defendants.

33. As a result of defendants' violation of the Magnuson Moss Warranty Act, plaintiff is entitled to relief as set forth in the prayer of this complaint.

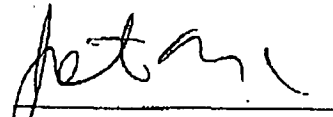
PRAYER FOR RELIEF

WHEREFORE, Plaintiff John Rinaldi prays for judgment as follows:

1. For general, special and actual damages according to proof at trial;
2. For rescission of the purchase contract and restitution of all monies expended;
3. For incidental and consequential damages according to proof at trial;
4. For a civil penalty in an amount of two times plaintiff's actual damages;
5. For prejudgment interest at the legal rate;
6. For reasonable attorneys' fees and costs of suit; and
7. For such other and further relief as this court deems just and proper.

DATED: February 4, 2008

LEMON LAW ADVOCATES
Jonathan D. McCue (128896)
Stephen P. Polapink (177489)


Jonathan D. McCue

1 GATES, O'DOHERTY, GONTER & GUY, LLP
2 15373 Innovation Drive, Suite 170
3 San Diego, California 92128
Telephone: (858) 676-8600
Facsimile: (858) 676-8601

4 Attorney: DOUGLAS D. GUY, ESQ. (SBN 117844)
dguy@gogqlaw.com

5 NADINE M. SAYEGH, ESQ. (SBN 250651)
6 n.sayegh@gogqlaw.com

7 Attorneys for Defendant PORSCHE CARS NORTH AMERICA, INC.

8
9 IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
10 NORTH COUNTY DIVISION

11 JOHN RINALDI, an individual,) CASE NO. 37-2008-00051009-CU-BC-NC
12)
13 Plaintiff,)
14 vs.) ANSWER TO COMPLAINT
15)
16 PORSCHE CARS NORTH AMERICA,)
17 INC., a corporation, and DOES 1) Judge Robert P. Dahlquist
18 through 5, inclusive,) Department N-29
19 Defendants.) Action Filed: February 5, 2008
20)
21)

22 Defendant PORSCHE CARS NORTH AMERICA, INC. ("Answering
23 Defendant") answers the Complaint filed by JOHN RINALDI ("Plaintiff")
24 as follows:

25 GENERAL DENIAL

26 1. Inasmuch as the Complaint is not verified, and under the
27 provisions of Code of Civil Procedure §431.30, Answering Defendant
28 denies generally and specifically each and every allegation in such

1 Complaint and the whole thereof, including a denial of all sums and
2 amounts alleged to be owed or otherwise.

3 2. Further answering such Complaint and the whole thereof,
4 including each and every cause of action therein, Answering Defendant
5 denies that Plaintiff has sustained, or will sustain, any damage or
6 loss by reason of any act, omission, breach of contract, either
7 express or implied or both, or any other conduct or absence thereof
8 on the part of Answering Defendant or any agent, servant, or employee
9 of Answering Defendant, and denies that Answering Defendant committed
10 of any wrongful act or omission whatsoever.

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(Comparative Fault)**

13 3. If Plaintiff sustained any damages as alleged in the
14 complaint, that damage was proximately caused and contributed to by
15 Plaintiff in failing to conduct himself in a manner ordinarily
16 expected of reasonably prudent persons in the conduct of their -
17 affairs and business. The contributory negligence and fault of
18 Plaintiff diminishes any recovery herein.

19 **SECOND AFFIRMATIVE DEFENSE**

20 **(Contributory Negligence of Third Parties)**

21 4. If the Plaintiff sustained any damages as alleged in the
22 complaint, that damage was proximately caused and contributed to by
23 persons and/or parties other than Answering Defendant in failing to
24 conduct themselves in a manner ordinarily expected of reasonably
25 prudent persons in the conduct of their affairs and business.
26 Contributory negligence and fault of persons and/or parties other
27 than Answering Defendant diminishes any recovery from this Answering
28 Defendant.

1 **THIRD AFFIRMATIVE DEFENSE**

2 (Failure To State A Cause Of Action)

3 5. Plaintiff's complaint, and each cause of action and count
4 thereof, fails to state sufficient facts to constitute a cause of
5 action against the Answering Defendant.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 (Disclaimer of Warranties/Damages)

8 6. Plaintiff's causes of action for breach of express and
9 implied warranties and incidental and consequential damages are
10 barred or limited by the express disclaimers and limitations of
11 liability contained in the alleged express warranties or other
12 agreements made by Answering Defendant. These disclaimers bar or
13 limit Plaintiff's recovery herein.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 (Statute of Limitations)

16 7. Any cause of action alleged in the complaint is barred by
17 the statute of limitations, whether contained in Code of Civil
18 Procedure, sections 337, 338, 339, 340, 343, Commercial Code section
19 2725, Answering Defendant's warranty, Civil Code section 1783, or
20 otherwise.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 (Failure to Mitigate Damages)

23 8. If Plaintiff sustained any damage as alleged in the
24 complaint, that damage was proximately caused and contributed to by
25 Plaintiff in failing to mitigate damages. Plaintiff's failure to
26 mitigate damages diminishes any recovery herein.

27 ///

28 ///

(Estoppel)

9. Answering Defendant is informed and believes and based thereon alleges that Plaintiff has engaged in conduct and activity sufficient to estop them from asserting all or any part of any claim set forth in their complaint.

(Unclean Hands)

10. Answering Defendant is informed and believes and based thereon alleges that the claims and relief sought by Plaintiff are barred by reason of the doctrine of unclean hands.

(Waiver)

11. Answering Defendant is informed and believes and based thereon alleges that Plaintiff has engaged in conduct and activities sufficient to constitute a waiver of any alleged breach of contract, breach of warranty, negligence or any other conduct as set forth in the complaint.

(Laches)

12. Answering Defendant is informed and believes and based thereon alleges that Plaintiff waited an unreasonable period of time to complain of the alleged acts or omissions at issue in the complaint so as to prejudice this Answering Defendant. Plaintiff is therefore guilty of laches and barred from recovery.

///

///

///

ELEVENTH AFFIRMATIVE DEFENSE**(Failure of Performance)**

13. Answering Defendant is informed and believes and based thereon alleges that any failure to perform the obligations as described in the complaint resulted from Plaintiff's failure to perform as required by the contract and/or warranty. Performance on Plaintiff's part of their obligations was a condition precedent to the performance of Answering Defendant's obligations.

TWELFTH AFFIRMATIVE DEFENSE**(Alteration of Product)**

14. The vehicle was not defective or in an unmerchantable condition at any time when it left the possession, custody and control of these Answering Defendant. Any damage to the subject vehicle was caused and created by changes and alterations made to the vehicle, subsequent to the time of the vehicle's manufacture and/or sale, by persons other than Answering Defendant or any of its agents, servants, or employees, thereby barring Plaintiff's recovery herein.

THIRTEENTH AFFIRMATIVE DEFENSE**(Failure to State Facts Sufficient for Recovery of a Civil Penalty)**

15. The complaint fails to state sufficient facts to warrant the imposition of a civil penalty.

FOURTEENTH AFFIRMATIVE DEFENSE**(Consent)**

16. The repair process to Plaintiff's vehicle was appropriate and proper and is believed to have been done with the Plaintiff's consent.

///

///

FIFTEENTH AFFIRMATIVE DEFENSE

(Abuse or Failure to Maintain)

17. The Plaintiff is barred from recovery by virtue of Civil Code section 1794.3, and other law, since the claimed defects or nonconformities were caused by the unauthorized or unreasonable use of the vehicle following sale.

SIXTEENTH AFFIRMATIVE DEFENSE

(Waiver of Right to Restitution/Rescission-Type Damages)

18. Plaintiff has waived his right to seek restitution or rescission-type damages against Answering Defendant as a matter of law, or, as an alternative, Answering Defendant is entitled to an equitable setoff for use of the vehicle.

SEVENTEENTH AFFIRMATIVE DEFENSE

(No Privity)

19. There is no contractual vertical privity between the Plaintiff and Answering Defendant therefore barring any claim for breach of implied warranty.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No Revocation)

20. Plaintiff is not entitled to revocation/rescission type damages because there is no vertical privity between Plaintiff and Answering Defendant.

NINETEENTH AFFIRMATIVE DEFENSE

[Failure to Properly Revoke Acceptance]

21. The Plaintiff failed to properly revoke acceptance by either failing to notify within a reasonable amount of time and/or before substantially altering or changing the product.

TWENTIETH AFFIRMATIVE DEFENSE

[Failure to Provide Notice or Give Opportunity to Cure]

22. The Plaintiff's Complaint fails as a matter of law due to their failure to provide notice and give Answering Defendant an opportunity to cure.

TWENTY-FIRST AFFIRMATIVE DEFENSE

[Business Use of the Motor home]

23. The Plaintiff's Complaint fails as a matter of law due to his use of the motor home for business purposes.

TWENTY-SECOND AFFIRMATIVE DEFENSE

[Failure to Submit Claims to Dispute Resolution]

24. The Plaintiff failed to submit his claims to Answering Defendant's Alternative Dispute Resolution Program as set forth in Answering Defendant's warranty, and by law, thus precluding any claim pursuant to the Magnuson Moss warranty Act or a civil penalty pursuant to the Song-Beverly Warranty Act.

WHEREFORE, ANSWERING DEFENDANT prays as follows:

1. That Plaintiff take nothing by way of his complaint on file herein;

2. That judgment be entered in favor of defendant, including costs of suit; and

///

///

///

///

///

///

1 3. For such other and further relief as the Court may deem
2 just and proper.
3
4

5 Dated: March 4, 2008 GATES, O'DOHERTY, GONTER & GUY, LLP
6
7

8 By: 

DOUGLAS D. GUY
Attorneys for Defendant
PORSCHE CARS NORTH AMERICA, INC.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 PROOF OF SERVICE - CCP §1013a(3)

2 I am employed in the County of San Diego, State of California.
3 I am over the age of 18 and not a party to the within action; my
4 business address is 15373 Innovation Drive, Suite 170, San Diego, CA
5 92128.

6 On March 5, 2008, I served the foregoing document described as
7 **ANSWER TO COMPLAINT** on the interested parties in this action in the
8 following manner:

9 Jonathan D. McCue, Esq. Attorneys for Plaintiff
10 Stephen P. Polapink, Esq. JOHN RINALDI
11 Lemon Law Advocates
12 31938 Highway 79 South, Suite A-328
13 Temecula, CA 92592
14 (951)553-4986, Fax (951)302-5850

15 (X) **BY MAIL.** I am familiar with this firm's practice of
16 collection and processing correspondence for mailing with
17 the United States Postal Service, and that the
18 correspondence shall be deposited with the United States
19 Postal Service on the same day in the ordinary course of
20 business pursuant to Code of Civil Procedure section 1013a.
21 I am aware that on a motion of party served, service is
22 presumed invalid if postal cancellation date or postage
23 meter date is more than one day after date of deposit for
24 mailing affidavit.

25 () **BY FACSIMILE.** In addition to service by mail as set forth
26 above, a copy of said document(s) was also delivered by
27 facsimile transmission to the addressee(s) pursuant to Code
28 of Civil Procedure section 1013(e).

() **BY PERSONAL SERVICE.** I caused a true copy of said
document(s) to be hand-delivered to the addressee(s) via a
California registered process server pursuant to Code of
Civil Procedure section 1011. If required, said registered
process server's original proof of personal service will be
filed with the court immediately upon its receipt.

() **BY EXPRESS MAIL.** I caused a true copy of said document(s)
to be deposited in a box or other facility regularly
maintained by the express service carrier providing
overnight delivery pursuant to Code of Civil Procedure
section 1013(c).

25 I declare under penalty of perjury under the laws of the State
26 of California that the foregoing is true and correct and that this
27 declaration was executed on March 5, 2008, at San Diego, California.

28 
JENNIFER LYNN SMITH

PROOF OF SERVICE - CCP §1013a(3)


I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 15373 Innovation Drive, Suite 170, San Diego, California 92128.

On March 6, 2008, I served the foregoing document described as **NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§ 1331, 1441(b), and 1446** on the interested parties in this action as set forth on the attached service list in the following manner:

- (X) **BY MAIL.** I am familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service on the same day in the ordinary course of business pursuant to Code of Civil Procedure section 1013a. I am aware that on a motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.
- () **BY FACSIMILE.** In addition to service by mail as set forth above, a copy of said document(s) was also delivered by facsimile transmission to the addressee(s) pursuant to Code of Civil Procedure section 1013(e).
- () **BY PERSONAL SERVICE.** I caused a true copy of said document(s) to be hand-delivered to the addressee(s) via a California registered process server pursuant to Code of Civil Procedure section 1011. If required, said registered process server's original proof of personal service will be filed with the court immediately upon its receipt.
- () **BY EXPRESS MAIL.** I caused a true copy of said document(s) to be deposited in a box or other facility regularly maintained by the express service carrier providing overnight delivery pursuant to Code of Civil Procedure section 1013(c).

I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on March 6, 2008, at San Diego, California.


JENNIFER LYNN SMITH

1 RINALDI v. PORSCHE CARS NORTH AMERICA, INC.
2 USDC Southern District Court Case No.:

3 SERVICE LIST

4
5 Jonathan D. McCue, Esq. Attorneys for Plaintiff
6 Stephen P. Polapink, Esq. JOHN RINALDI, an individual
7 Lemon Law Advocates
8 31938 Highway 79 South, Suite A-328
9 Temecula, CA 92592
10 (951)553-4986, Fax (951)302-5850

11 COUNSEL/PARTY SERVING THIS DOCUMENT:

12 DOUGLAS D. GUY, Esq. Attorneys for Defendant
13 GATES, O'DOHERTY, GONTER & GUY, LLP PORSCHE CARS OF NORTH
14 15373 Innovation Drive, Suite 170 AMERICA, INC.
15 San Diego, CA 92128
16 (858) 676-8600, Fax (858) 676-8601
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 148478 - SH
* * C O P Y * *
March 06, 2008
15:32:04**

Civ Fil Non-Pris

USAO #.: 08CV0428

Judge.: JOHN A HOUSTON

Amount.: \$350.00 CK

Check#.: BC0038707

Total-> \$350.00

FROM: RINALDI V. PORSCHE CARS NA

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JOHN RINALDI

DEFENDANTS

PORSCHE CARS NORTH AMERICA, INC.

FILED
08 MAR -6 PM 3:30CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**(b) County of Residence of First Listed Plaintiff**

(EXCEPT IN U.S. PLAINTIFF CASES)

San Diego, County

(c) Attorney's (Firm Name, Address, and Telephone Number)

GATES, O'DOHERTY, GONTER & GUY, LLP
15373 Innovation Drive
Suite 170
San Diego, CA 92128
858-676-8600

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'08 CV 0428 JAH-NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	LABOR	PROPERTY RIGHTS	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 366 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 490 Selective Service	<input type="checkbox"/> 500 Securities/Commodities/Exchange
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 510 Securities/Commodities/Exchange	<input type="checkbox"/> 520 Copyrights
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 530 Patent	<input type="checkbox"/> 540 Trademark
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		LABOR	<input type="checkbox"/> 561 HIA (1395M)	<input type="checkbox"/> 575 Customer Challenge 12 USC 3410
<input checked="" type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 582 Black Lung (923)	<input checked="" type="checkbox"/> 590 Other Statutory Actions
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 583 DIWC/DIWW (405(g))	<input type="checkbox"/> 591 Agricultural Acts
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 584 SSID Title XVI	<input type="checkbox"/> 592 Economic Stabilization Act
REAL PROPERTY	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motion to Vacate Sentence	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 585 RSI (405(g))	<input type="checkbox"/> 593 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 570 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 594 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 781 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 571 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 595 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 445 Amer. w/Disabilities-Employment	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Amer. w/Disabilities-Other	<input type="checkbox"/> 550 Civil Rights			
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. 2310

Brief description of cause: Violation of Magnuson-Moss.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ 0.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/6/08

FOR OFFICE USE ONLY

RECEIPT #

SIGNATURE OF ATTORNEY OF RECORD

Nadane M. Szygalski

G IFP

JUDGE

MAG. JUDGE

CR 148478 \$350 ser 3/6/08